

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ESTATE OF STEVEN B. HOJNA, deceased,
by GREGORY HOJNA, Personal Representative,

Plaintiff,

v.

Case No. 04-75081
Honorable Victoria A. Roberts

CITY OF ROSEVILLE, a Municipal
Corporation, P.O. MICHAEL BERLIN,
P.O. JOSEPH TROMBLEY, SGT.
GLANDON, P.O. THOMAS PFEIFER,
P.O. DAVID LUKASAVAGE, P.O.
MICHAEL SAIER, LT. CLARK, SGT.
WALLER, and Police Chief RICHARD
HEINZ, Jointly and/or severally,

Defendants.

**ORDER DISMISSING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT WITHOUT PREJUDICE PURSUANT TO RULE 56(F)**

This matter is before the Court on Defendants' Motion for Summary Judgment. Pursuant to Federal Rule of Civil Procedure 56(f), the Court **DISMISSES** Defendants' Motion without prejudice to allow Plaintiff further time for discovery.

The Plaintiff alleges wrongful death under 42 USC § 1983 and §1983 violations against the Defendant City, as well as related state actions. The claims arise from the police shooting of the Plaintiff's decedent, Steven Hojna.

The incident that gave rise to the shooting occurred on February 3, 2002. The

Complaint was filed on December 30, 2004. The Defendants' filed a motion for summary judgment as to all Defendants on June 17, 2005.

On July 8, 2005, the Plaintiff filed a response requesting more time for discovery in order to present a defense to the motion. An affidavit to that effect was annexed to the response.

Federal Rule of Civil Procedure 56(f) reads as follows:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

In accordance with Rule 56(f), the Court **DISMISSES** Defendants' Motion for Summary Judgment without prejudice.

IT IS SO ORDERED.

s/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: October 3, 2005

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on October 3, 2005.

s/Linda Vertriest
Deputy Clerk